

SUPREME COURT OF ARKANSAS

Alltel Corp. v. Rosenow

2014 Ark. 375 (2014) · No. CV-13-995 · Decided September 18, 2014

SUMMARY

The Supreme Court of Arkansas affirmed the denial of Alltel Corporation and Alltel Communications, Inc.'s motion to compel arbitration in a class action concerning early termination fees. The court held that the arbitration agreement was invalid and unenforceable for lack of mutuality because Alltel reserved the ability to pursue remedies outside arbitration while limiting customers to arbitration. The court affirmed on direct appeal and dismissed Rosenow's cross-appeal concerning waiver as moot.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam; Paul E. Danielson; Baker; Goodson; Hoofman
JURISDICTION	Arkansas
DECIDED	September 18, 2014
DOCKET	CV-13-995
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from an order denying Alltel's motion to compel arbitration of claims asserted in a certified class action; Rosenow cross-appealed on waiver of arbitration.
STANDARD OF REVIEW	De novo on the record.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Alltel Corporation, Alltel Communications, Inc. v. Peter Rosenow, individually and on behalf of a class of similarly situated persons

TOPICS

- arbitration
- mutual assent
- contracts
- class actions
- appellate procedure

PRACTICE AREAS

- arbitration
- contracts
- consumer protection
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the arbitration agreement was invalid and unenforceable for lack of mutuality of obligation under Arkansas contract law.
2. Whether Arkansas's requirement that an arbitration agreement contain mutuality of obligation is preempted by the Federal Arbitration Act.
3. Whether the circuit court erred by considering parol evidence in evaluating mutuality.
4. Whether Alltel failed to enforce a valid arbitration agreement and thereby waived arbitration.

HOLDINGS

1. An arbitration agreement is unenforceable when it lacks mutuality of obligation. The agreement here lacked mutuality because Alltel reserved for itself, but not its customers, the ability to pursue remedies outside arbitration without waiving arbitration.
2. The Federal Arbitration Act does not preempt Arkansas's requirement that arbitration agreements satisfy the generally applicable contract-law requirement of mutuality of obligation.
3. The court did not need to decide whether the circuit court improperly considered parol evidence because the arbitration agreement was invalid for lack of mutuality based on the contract's written provisions.
4. Rosenow's cross-appeal concerning whether Alltel waived arbitration was moot because the arbitration agreement was invalid for lack of mutuality.

KEY QUOTATIONS

“Alltel provided itself with an “out” to the required arbitration; Alltel customers, such as Rosenow, however, were limited to pursuing relief against Alltel in the form of arbitration, while Alltel alone was provided absolution if it chose to pursue an alternate remedy.” (2014 Ark. 375, at 8)

“The lack of mutuality to arbitrate in the arbitration agreement renders the agreement invalid and unenforceable.” (2014 Ark. 375, at 9)

“Accordingly, we decline Alltel’s invitation to reject our precedent, which requires mutuality as an essential element for an enforceable arbitration agreement.” (2014 Ark. 375, at 11)

FACTUAL BACKGROUND

Rosenow brought claims against Alltel concerning early-termination fees charged to cellular-phone customers. Alltel's wireless terms and conditions contained an arbitration clause requiring disputes to be arbitrated, but also stated that Alltel's failure to enforce any contractual right or remedy would not constitute a waiver. Alltel moved to compel arbitration only after class certification and substantial litigation, while the circuit court found that Alltel had reserved an ability to pursue nonarbitration remedies without waiver.

PROCEDURAL HISTORY

Rosenow filed a class-action complaint alleging violations of the Arkansas Deceptive Trade Practices Act and unjust enrichment based on Alltel's early-termination fees. The circuit court initially denied class certification, but the Arkansas Supreme Court reversed and remanded; the circuit court then certified the class. Alltel later moved to compel arbitration for class members subject to arbitration provisions, and the circuit court denied the

motion, concluding that the arbitration provision lacked mutuality of obligation, among other reasons. The Supreme Court affirmed on direct appeal and held the cross-appeal moot.

DISPOSITION

affirmed

CASES CITED

- *Rosenow v. Alltel Corp.*, 2010 Ark. 26, 358 S.W.3d 879
- *The Money Place, LLC v. Barnes*, 349 Ark. 411, 78 S.W.3d 714 (2002)
- *Courtyard Gardens Health & Rehabilitation, LLC v. Quarles*, 2013 Ark. 228, 428 S.W.3d 437
- *DIRECTV, Inc. v. Murray*, 2012 Ark. 366, 423 S.W.3d 555
- *Alltel Corp. v. Sumner*, 360 Ark. 573, 203 S.W.3d 77 (2005)
- *Tyson Foods, Inc. v. Archer*, 356 Ark. 136, 147 S.W.3d 681 (2004)
- *Independence County v. City of Clarksville*, 2012 Ark. 17, 386 S.W.3d 395
- *Advance America Servicing of Arkansas, Inc. v. McGinnis*, 375 Ark. 24, 289 S.W.3d 37 (2008)
- *Asbury Automotive Used Car Center v. Brosh*, 364 Ark. 386, 220 S.W.3d 637 (2005)
- *Arkansas Diagnostic Center v. Tahiri*, 370 Ark. 157, 257 S.W.3d 884 (2007)
- *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996)
- *Perry v. Thomas*, 482 U.S. 483 (1987)
- *Barker v. Golf U.S.A., Inc.*, 154 F.3d 788 (8th Cir. 1998)
- *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974)
- *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)
- *AT&T Mobility LLC v. Concepcion*, *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 131 S. Ct. 1740 (2011)
- *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983)
- *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010)
- *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006)
- *Southeastern Stud & Components, Inc. v. American Eagle Design Build Studios, LLC*, 588 F.3d 963 (8th Cir. 2009)
- *Enderlin v. XM Satellite Radio Holdings, Inc.*, No. 4:06-CV-0032 GTE, 2008 WL 830262 (E.D. Ark. Mar. 25, 2008)